

No. 14-1666

**United States Court of Appeals
for the Federal Circuit**

BRK BRANDS, INC. & GARY J. MORRIS, PH.D.,

Plaintiffs-Appellants

v.

NEST LABS, INC.,

Defendant-Appellee

On Appeal from the United States District Court for the Northern District of Illinois
Case No. 1:13-cv-07900, Honorable Richard A. Posner

**JOINT MOTION TO ALLOW FOR A 45-DAY EXTENSION OF TIME TO
FILE APPELLANTS' INITIAL BRIEF AND A 23-DAY EXTENSION OF
TIME TO FILE APPELLEE'S INITIAL BRIEF**

Plaintiffs-Appellants BRK Brands, Inc. and Gary J. Morris, Ph.D.
 (collectively, “BRK”) and Defendant-Appellee Nest Labs, Inc. (“Nest”) hereby
 move, under FRAP 26(b) and Federal Circuit Rule 26(b), and based on the
 accompanying Declaration of Bryan J. Sinclair and Declaration of Kevin X.
 McGann, for a 45-day extension of time for BRK’s Initial Brief and a 23-day
 extension of time for Nest’s Initial Brief as follows:

| Event | Original Deadline | Revised Deadline |
|---------------------------|-------------------|------------------|
| Appellants’ Initial Brief | December 8, 2014 | January 22, 2015 |
| Appellee’s Initial Brief | March 3, 2015 | March 26, 2015 |

All subsequent deadlines will consequently be extended in accordance with
 the Federal Rules of Appellate Procedure and the Federal Circuit Rules. Two prior
 extensions of time totaling 75 days have been granted by the Court (Dkts. 22 and
 27).

Dated: December 1, 2014

Respectfully submitted,

/s/ Kevin X. McGann

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APPELLANT GARY J. MORRIS,
PH.D.

DECLARATION OF GOOD CAUSE

I, Bryan J. Sinclair, declare:

1. I am an attorney duly licensed and admitted to practice before this Court and a partner in the law firm of K&L Gates LLP. I have personal knowledge of the facts hereafter stated, and if called and sworn as a witness, could testify competently thereto. I make this declaration in support of this joint motion to allow for a 45-day extension of time to file appellants' initial brief and a 23-day extension of time to file appellee's initial brief.

2. Nature of Appeal: This appeal arises from a patent lawsuit.

3. Good Cause: There is good cause for this extension of time. The parties continue to engage in settlement negotiations and remain optimistic about the prospect of settlement. However, the parties require one final 45-day extension to conclude the settlement discussions and, if successful, finalize the settlement agreement and formal documentation.

4. Opposing Counsel Position: Counsel for Appellee Nest Labs, Inc. have stated that they do not oppose this requested extension.

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct. Executed this 1st day of December, 2014 at Palo Alto, California.

/s/ Bryan J. Sinclair
Bryan J. Sinclair

DECLARATION OF GOOD CAUSE

I, Kevin X. McGann, declare:

1. I am an attorney duly licensed and admitted to practice before this Court and a partner in the law firm of White & Case LLP. I have personal knowledge of the facts hereafter stated, and if called and sworn as a witness, could testify competently thereto. I make this declaration in support of this joint motion to allow for a 45-day extension of time to file appellants' Initial Brief and a 23-day extension of time to file appellee's Initial Brief.

2. Nature of Appeal: This appeal arises from a patent lawsuit.

3. Good Cause: There is good cause for this extension of time. The parties continue to actively pursue efforts to settle this litigation and remain optimistic about the prospect of settlement.

4. Opposing Counsel Position: Counsel for Appellants BRK Brands, Inc. and Gary J. Morris, Ph.D. have consented to this requested extension.

I declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct. Executed this 1st day of December, 2014 at New York, New York.

/s/ Kevin X. McGann
Kevin X. McGann

CERTIFICATE OF INTEREST

Counsel for Appellant BRK Brands, Inc. certifies the following:

1. The full name of every party or amicus represented by me is:

BRK Brands, Inc.

2. The name of the real party in interest represented by me is:

None.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

Jarden Corporation.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Bryan J. Sinclair, Sanjay K. Murthy, Michael J. Abernathy, Benjamin E.

Weed, Devon C. Beane, Ravi S. Deol of K&L Gates LLP.

Dated: December 1, 2014

/s/ Bryan J. Sinclair

Signature of counsel

Bryan J. Sinclair

Printed Name of counsel

CERTIFICATE OF INTEREST

Counsel for Appellant Gary J. Morris, Ph.D. certifies the following:

1. The full name of every party or amicus represented by me is:

Gary J. Morris, Ph.D.

2. The name of the real party in interest represented by me is:

None.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

None.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

Buchanan Ingersoll & Rooney PC - Lynn J. Alstadt, Craig G. Cochenour;
K&L Gates LLP - Bryan J. Sinclair, Sanjay K. Murthy, Michael J. Abernathy,
Benjamin E. Weed, Devon C. Beane, Ravi S. Deol.

Dated: December 1, 2014

/s/ Lynn J. Alstadt

Signature of counsel

Lynn J. Alstadt

Printed Name of counsel

CERTIFICATE OF INTEREST

Counsel for Appellee Nest Labs, Inc. certifies the following:

1. The full name of every party or amicus represented by me is:

Nest Labs, Inc.

2. The name of the real party in interest represented by me is:

Nest Labs, Inc.

3. All parent corporations and any publicly held companies that own 10 percent or more of the stock of the party or amicus curiae represented by me are:

Nest Labs, Inc. is a wholly owned subsidiary of Google Inc.

4. The names of all law firms and the partners or associates that appeared for the party or amicus now represented by me in the trial court or agency or are expected to appear in this court are:

White & Case LLP - Kevin X. McGann, Jeffrey J. Oelke, John P.

Scheibeler, John P. Padro, Vigen Salmastlian; Baker & Hostetler LLP- John

Letchinger, Frank Blechschmidt; Kirkland & Ellis LLP- Marcus E. Sernel, David

Rokach, Reid P. Heufner, Louis A. Klapp.

Dated: December 1, 2014

/s/ Kevin X. McGann

Signature of counsel

Kevin X. McGann

Printed Name of counsel

FORM 30. Certificate of Service

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

CERTIFICATE OF SERVICE

I certify that I served a copy on counsel of record on
by:

Dec 1, 2014

- ☐ US mail
☐ Fax
☐ Hand
☒ Electronic Means
(by email or CM/ECF)

Bryan J. Sinclair

Name of Counsel

/s/ Bryan J. Sinclair

Signature of Counsel

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NOTE: For attorneys filing documents electronically, the name of the filer under whose log-in and password a document is submitted must be preceded by an "/s/" and typed in the space where the signature would otherwise appear. Graphic and other electronic signatures are discouraged.